

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Maria C. Cruz, :
Petitioner :
 :
v. : No. 1548 C.D. 2010
 : Submitted: December 30, 2010
Unemployment Compensation Board :
of Review, :
Respondent :

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE LEAVITT

FILED: March 17, 2011

Maria Cruz (Claimant) petitions, *pro se*, for review of an adjudication of the Unemployment Compensation Board of Review (Board) denying her application for unemployment compensation benefits. The Board found that Claimant was ineligible for benefits under Section 402(e) of the Unemployment Compensation Law (Law), 43 P.S. §802(e),¹ because she had been discharged for willful misconduct. In doing so, the Board reversed the Referee’s decision granting benefits. Because substantial evidence supports the Board’s finding that Claimant falsified company records, we will affirm.

¹ Act of December 5, 1936, Second Ex. Sess., P.L. (1937) 2897, *as amended*, 43 P.S. §802(e). It provides, in relevant part, that “[a]n employe shall be ineligible for compensation for any week ... [i]n which his unemployment is due to his discharge or temporary suspension from work for willful misconduct connected with his work.” 43 P.S. §802(e).

Claimant was employed by Servpro Langhorne (Employer), a cleanup and restoration company, as an office manager from September 16, 2003, until she was discharged on January 28, 2010. The stated reason for Claimant's discharge was falsifying unemployment compensation documents for her son, who was also employed by Employer, so that he could collect benefits. Claimant applied for unemployment compensation benefits, which were denied by the UC Service Center. Claimant appealed, and a hearing was conducted by the Referee.

Employer's owner, Patricia Fiedler, testified that Claimant's son, Will Morales, was responsible for marketing Employer's services and was issued a company car each day after he clocked in. On June 30, 2009, Fiedler observed Morales' company car parked at his home for several hours when he was supposed to be working. On July 1, 2009, Fiedler informed Claimant that she was terminating Morales for submitting a false time record for the previous day. Fiedler testified that she normally completes unemployment compensation paperwork on behalf of Employer, and Claimant was also authorized to do this paperwork. On this occasion, however, Fiedler testified that she did not direct Claimant to complete unemployment compensation paperwork for Morales.

In August or September 2009, Fiedler received a report from the Department of Labor and Industry listing all of Employer's former employees who were collecting unemployment compensation. When Fiedler reviewed the report she learned for the first time that Morales was collecting benefits.² Fiedler contacted the Department on several occasions to obtain copies of the paperwork

² The Board's opinion states that Employer did not discover Morales was collecting unemployment benefits until January 2010. In its brief to this Court, the Board acknowledges that Employer actually received the Department's report in August or September 2009. We agree with the Board that this discrepancy does not affect the outcome of Claimant's case.

filed for Morales so she could determine who filled it out on Employer's behalf. When the Department did not respond, Fiedler asked another employee, Jacqueline Muir, to investigate. Muir asked Claimant if she had received any information from the Department regarding Morales' unemployment; Claimant responded that she had not.³

In January 2010, Fiedler discovered copies of Morales' unemployment compensation documents hidden in Claimant's desk drawer. The documents were signed by Claimant and stated that Morales had been terminated for lack of work. Fiedler discharged Claimant a few days later, on January 28, 2010.

Claimant acknowledged that she had a conversation with Fiedler on July 1 about why her son was being terminated. According to Claimant, however, Fiedler told her that Morales could collect unemployment because Fiedler was willing to state that the reason for his separation from employment was lack of work. Notes of Testimony, March 18, 2010, at 13 (N.T. __). Claimant testified that when Morales' unemployment paperwork arrived, she put it on Fiedler's desk and then later filled it out herself based on her conversation with Fiedler. Claimant wrote on the form that Morales was "fired" for "lack of work." Certified Record Item No. 10, Employer's Exhibit 2.

The Referee credited Claimant's testimony that Fiedler authorized her to report that Morales was terminated for lack of work and, thus, found that Claimant did not falsify documents. Accordingly, the Referee held that Claimant did not commit willful misconduct. Employer appealed.

³ Muir also testified at the Referee's hearing and confirmed she had this conversation with Claimant.

On review, the Board reversed. The Board rejected Claimant's testimony that she was authorized to say Morales was terminated for lack of work. The Board credited Fiedler's testimony that she first learned that Morales was receiving unemployment compensation when she received the Department's report, and that she learned Claimant had completed Morales' paperwork when she found it hidden in Claimant's desk. The Board found that Claimant was not authorized to complete the documents and had falsified the reason for Morales' discharge. Concluding that Claimant's conduct constituted willful misconduct, the Board held she was ineligible for benefits under Section 402(e) of the Law, 43 P.S. §802(e). Claimant now petitions for this Court's review.

On appeal,⁴ Claimant does not dispute that she completed the documentation submitted by Employer for her son's unemployment claim. She argues that the reason she offered for Morales' discharge was based upon Fiedler's instructions. Stated another way, Claimant contends that she had good cause for her actions. Claimant also suggests that her termination was too remote in time from her alleged misconduct.⁵

⁴ Our scope of review is limited to determining whether constitutional rights were violated, an error of law committed or whether necessary findings of fact are supported by substantial competent evidence. *Seton Company v. Unemployment Compensation Board of Review*, 663 A.2d 296, 298 n.2 (Pa. Cmwlth. 1995).

⁵ Claimant also contends that the reason for her termination was pretextual because Fiedler wanted to replace her with a newly hired employee. Claimant has attached three documents to her brief, labeled Exhibits A, B and "Letter to Ms. Fiedler," in support of this argument. These documents are not part of the certified record, therefore, we may not consider them. PA. R.A.P. 1951(a)(3) (the record before this Court "shall consist of ... [t]he pleadings, evidence and proceedings before the government unit."). In any event, Claimant did not raise this as an issue in her application for unemployment compensation, and the Board rejected as not credible Claimant's testimony regarding this contention.

Whether an employee's actions amount to willful misconduct is a question of law subject to review by this Court. *Nolan v. Unemployment Compensation Board of Review*, 425 A.2d 1203, 1205 (Pa. Cmwlth. 1981).

Willful misconduct has been judicially defined as conduct that evidences:

- (1) the wanton and willful disregard of the employer's interest,
- (2) the deliberate violation of rules,
- (3) the disregard of standards of behavior which an employer can rightfully expect from his employee, or
- (4) negligence which manifests culpability, wrongful intent, evil design or intentional and substantial disregard for the employer's interests or the employee's duties and obligations.

Id. (citation omitted). The deliberate falsification of employment records constitutes a conscious disregard of standards of behavior which an employer has the right to expect from his employees. *Id.*

Here, Claimant was aware that Morales was discharged because he was at home when he was on the clock. Nevertheless, Claimant stated on Morales' unemployment paperwork that he was terminated for lack of work, a fact Claimant knew to be false. Claimant asserts that she had good cause for her actions because Fiedler permitted her to report lack of work as the reason for Morales' separation from employment. However, the Board discredited Claimant's testimony on this point and credited Fiedler's testimony that she never gave Claimant such authority. It is axiomatic that the Board is the ultimate fact finder and is entitled to make its own determinations as to witness credibility and evidentiary weight. *McFadden v. Unemployment Compensation Board of Review*, 806 A.2d 955, 958 (Pa. Cmwlth. 2002). The Board is free to accept or reject the testimony of any witness in whole

or in part. *Id.* We will not revisit the Board’s credibility determinations, which are supported by the evidence. If Claimant’s testimony were true, Fiedler would not have been surprised to learn in August or September that Morales was collecting unemployment, nor would she have had any reason to investigate his claim over the course of several months.

Finally, Claimant suggests in her brief that there was an excessive delay between her alleged misconduct and her discharge. She points out that Fiedler learned in August or September 2009 that Morales was collecting unemployment but waited until January 28, 2010, to terminate Claimant. It is true that a substantial delay between misconduct and discharge can preclude the denial of benefits. *Raimondi v. Unemployment Compensation Board of Review*, 863 A.2d 1242, 1247 (Pa. Cmwlth. 2004) (explaining the so-called “remoteness” doctrine). However, in this case Fiedler testified credibly that her initial reaction upon learning that Morales was collecting unemployment was to contact the Department for more information on the claim. When that approach proved unsuccessful, she conducted her own internal investigation. Fiedler did not learn that Claimant had falsified Morales’ unemployment paperwork until January 2010, when she discovered the documents hidden in Claimant’s desk drawer. Fiedler promptly terminated Claimant a few days later. In sum, there was no delay.

For all of the foregoing reasons, we affirm the Board’s denial of benefits.

MARY HANNAH LEAVITT, Judge

